



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648-BC37

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;

Reef Fish Fishery of the Gulf of Mexico; Amendment 38

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico (Gulf) Fishery Management Council (Council) has submitted Amendment 38 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Amendment 38 proposes to modify post-season accountability measures (AMs) that affect shallow-water grouper species (SWG), change the trigger for AMs, and revise the Gulf reef fish framework procedure.

DATES: Written comments must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the amendment identified by "NOAA-NMFS-2012-0149" by any of the following methods:

- Electronic submissions: Submit electronic comments

via the Federal e-Rulemaking Portal:

<http://www.regulations.gov>. Follow the "Instructions" for submitting comments.

- Mail: Steve Branstetter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous).

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter "NOAA-NMFS-2012-0149" in the search field and click on "search." After you locate the document "Gulf of Mexico Reef Fish Amendment 38," click the "Submit a Comment" link in that row. This will display the comment web form. You can then enter your submitter information (unless you prefer to remain anonymous), and type your comment on the web form. You can also attach additional files (up to

10MB) in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this notice will not be considered.

For further assistance with submitting a comment, see the "Commenting" section at <http://www.regulations.gov/#!faq> or the Help section at <http://www.regulations.gov>.

Electronic copies of Amendment 38 may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf>.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone: 727-824-5305, or e-mail: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the FMP. The FMP was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

Accountability measures were established for gag and red grouper in 2009 through Amendment 30B to the FMP (74 FR 17603, April 16, 2009). These AMs included the following provision: if the recreational sector annual catch limit (ACL) for gag or red grouper is exceeded in the current year, the recreational

season for all SWG is shortened the following year to ensure that the gag or red grouper recreational ACL is not exceeded again. Regulations implemented through Amendment 32 to the FMP (77 FR 6988, February 10, 2012) added more AMs, including in-season closures for gag and red grouper, and overage adjustments for gag and red grouper if they are overfished. Amendment 38 would modify the post-season AMs for gag and red grouper so that the shortening of the season following a season with an ACL overage applies only to the species with landings that exceeded the ACL the prior year. Modifying the AMs would improve the likelihood of achieving optimum yield for red grouper and avoid unnecessary closures of all SWG species (i.e., gag, red grouper, black grouper, scamp, yellowfin grouper, and yellowmouth grouper).

The current method for determining if post-season AMs have been triggered for red grouper or gag is to compute a one to 3-year moving average of recreational landings, and to compare that moving average of landings to the ACL. However, the use of a moving average has not been practicable due to the frequent changes that have occurred in the ACLs. In addition, the use of moving averages could potentially delay the implementation of AMs by unduly masking sizeable harvest overages and potentially slowing down the recovery of stocks under rebuilding. Amendment

38 would remove the 3-year moving average, allowing AMs to be based on comparison of the ACL to the current year's landings. A simple comparison of the current year's landings to the ACL could provide greater protection to the gag and red grouper stocks, be easier for fishermen to understand, and be less burdensome to administer.

Amendment 38 would revise the list of management measures that may be established or modified by the framework procedure specified in the FMP. Specifically, Amendment 38 would add a list of the AMs that may be revised through the Gulf reef fish framework process. Typically, framework actions take less than a year to implement and are effective until amended. Changes to AMs through the framework may result in faster implementation of measures beneficial to fish stocks and fishery participants. Additionally, Amendment 38 would update the language in the framework procedure related to Council advisory panels and committees. More general language in reference to Council committees and advisory panels would replace specific references that are no longer accurate.

A proposed rule that would implement measures outlined in Amendment 38 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act,

and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the Federal Register for public review and comment.

Consideration of Public Comments

The Council submitted Amendment 38 for Secretarial review, approval, and implementation on September 10, 2012. NMFS' decision to approve, partially approve, or disapprove Amendment 38 will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability.

Public comments received on or before [insert date 60 days after publication in the FEDERAL REGISTER], will be considered by NMFS in its decision to approve, partially approve, or disapprove Amendment 38. All comments received by NMFS on

Amendment 38 or the proposed rule for Amendment 38 during their respective comment periods will be addressed in a final rule.

Authority: 16 U.S.C. 1801 et seq.

Dated: October 9, 2012.

Lindsay Fullenkamp,
Acting Deputy Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

[FR Doc. 2012-25129 Filed 10/11/2012 at 8:45 am;
Publication Date: 10/12/2012]